

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NANNIE CHAINEY, et al. : CIVIL ACTION
: :
v. : :
: :
THE CITY OF PHILADELPHIA, et al.: NO. 03-06248-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

December 1, 2005

In 1985, some unfortunate police activity carried out by the Philadelphia Police Department caused a conflagration which destroyed or seriously damaged some 66 houses in the Cobbs Creek area of Philadelphia, primarily on Osage Avenue and Pine Street. Plaintiffs in this case are the owners of 24 of those damaged properties, who contend that they have not yet been made whole for the destruction, and have suffered additional damage, for which the defendants are responsible. The defendants are the City of Philadelphia, the Redevelopment Authority of Philadelphia, Mayor John F. Street, and officials of the Redevelopment Authority, and the Licenses and Inspections Department.

Plaintiffs assert claims in various categories, which they characterize as "due process" (Count I), "equal protection" (Count II), "takings clause" (Count III), "breach of contract" (Count IV), "specific performance" (Count V) and "civil conspiracy" (Count VI).

Shortly before his recent death, my colleague, Judge Clarence Newcomer, presided over a five-day jury trial, which resulted in a verdict in favor of all of the plaintiffs in the total amount of \$12,830,000. Each of the 24 sets of plaintiffs was awarded an equal share in this recovery, \$534,583. The case has now been transferred to my docket for disposition of the pending post-trial motions. I have carefully reviewed the entire record, including the transcript of the trial, and have considered the arguments set forth in the voluminous briefs of the parties, and have had the benefit of oral argument.

Preliminary Comments

It is apparent from the record that the case generated somewhat more heat than light, presumably as a result of animosity resulting from the seemingly interminable disputes among the parties throughout the 20 years which have elapsed since the original conflagration. At any rate, counsel for both sides seem to have felt that the righteousness of their respective causes was self-evident, and that it was unnecessary to undertake a precise analysis of the legal issues involved.

In ruling on the pending post-trial motions, I am required to consider the record as it was actually developed and presented by counsel, rather than attempt to supply missing portions, or suggest arguments or contentions which a better record might have warranted.

I note in particular that there were no significant objections to the court's charge, and that both sides agreed on the form and content of the lengthy and detailed verdict-form submitted to the jury - a form which, at least arguably, may not have alerted the jury to the need to avoid duplicative recoveries under various overlapping theories.

Finally, it should be mentioned that counsel specifically stipulated that, if plaintiffs were entitled to recover damages for "emotional distress," each set of plaintiffs should be awarded the same amount of money; and that there was no evidence which would have permitted awarding different amounts to different plaintiffs on any other theory in the case. In short, counsel must be deemed to have stipulated that each set of plaintiffs was to be awarded the same amount of damages, if damages were found to be recoverable. Neither side has questioned these assumptions, and their validity will not be further addressed.

Chronology of Relevant Events

The Police Department caused the conflagration on May 13, 1985. By September of the following year, all of the involved parties reached a settlement: the City agreed to replace all damaged homes with good-quality homes which complied with the applicable building codes, and to warrant those homes for at least 10 years.

The original contractor ran into difficulty, not pertinent to this case. In January 1988, the City entered into a contract with the Redevelopment Authority to complete the work necessary to maintain the 10-year warranty. By that time, the affected residents had been living in substitute housing, at the City's expense, for approximately two years. When they moved back into their houses, they encountered numerous problems. The replacement houses were smaller than the originals, and had fewer bedrooms. The roofs leaked, and there were many other serious difficulties. The City continued its efforts to set matters right.

By December 1995, the Redevelopment Authority had come to the conclusion that the work which remained to be done would cost \$8.5 million. In late 1996, at the request of the City and the affected homeowners, the Army Corps of Engineers undertook a complete study of the cost of finishing the repairs. In December 1997, the Corps issued a report outlining the costs involved. In 1998, the City and Redevelopment Authority worked with the Army Corps of Engineers to design a bidding document to solicit bids from private contractors to complete the repair work. In mid-1998, it was estimated that the cost of the remaining repairs would be approximately \$2 million.

On August 30, 1998, the Redevelopment Authority entered into a contract with Allied Construction Company, the successful

bidder, in the amount of \$1,765,538 for completing the repairs. Shortly after beginning the work, however, Allied encountered substantial unexpected difficulties and costs, throughout 1998 and 1999.

On December 22, 1999, outgoing Mayor Rendell wrote a letter to the homeowners, reaffirming the City's intent to complete the necessary repairs.

After Mayor Street took office in January 2000, City officials became concerned about the mounting costs. The Redevelopment Authority had requested an additional \$2.9 million for the project, and the City Controller reported that the City had already incurred almost \$13 million for repairs (\$211,286 per home). In March 2000, the City estimated that the additional cost would range between \$4.5 million and \$11 million. In mid-2000, the Department of Licenses and Inspections conducted a detailed inspection of the houses, at the request of the Mayor. In its report, L&I concluded that no defects rendered the homes imminently dangerous, but noted that there was a potential problem with air vents - an original construction defect that could potentially draw carbon monoxide into the homes. None of the residents had actually experienced any carbon monoxide problems at any time.

On June 16, 2000, the City's Commerce Director prepared a plan for relocating all of the residents.

By mid-July 2000, discussions among various City officials had resulted in a conclusion that the air-vent problem had rendered the houses imminently dangerous and that the remaining houses should be treated as a blighted area.

On July 21, 2000, the plaintiffs were summoned to a meeting with Mayor Street at City Hall. At that meeting, Mayor Street presented them with a letter informing them that the City would pay them \$125,000 per house, plus \$25,000 for relocation expenses, but that the parties would be required to vacate the premises not later than September 6, 2000. The residents were told that if they did not move, their homes would be taken through eminent domain.

On August 1, 2000, Mayor Street issued another letter, reiterating the same position. Shortly thereafter, the Philadelphia Gas Works began to "red-tag" plaintiffs' homes, with the result that PGW began terminating gas service to the houses. Immediately thereafter, plaintiffs brought suit in state court and obtained an injunction requiring PGW to continue to provide service, and establishing that the houses were not imminently dangerous for residence.

Analysis of Plaintiffs' Claims

The plaintiffs' basic contention is that the City was contractually obligated to complete the repairs and make their houses liveable, and that the defendants are liable for breach of

contract for having failed to live up to their contractual obligations. The defendant contended at trial that there was no binding contract. Three possibilities were submitted to the jury: the 1988 warranty commitment, the contract between Redevelopment Authority and Allied Construction, as to which plaintiffs claimed to be third-party beneficiaries, and the agreement evidenced by Mayor Rendell's December 1999 letter. The jury found that the defendants were contractually bound by the 1988 warranty agreement and by the terms of Mayor Rendell's letter, but did not accept the third-party beneficiary argument with respect to the Allied contract.

Contrary to the defendants' argument, I conclude that there was adequate evidentiary support for the jury's finding of breach of contract, insofar as the defendant City of Philadelphia is concerned.

The parties had stipulated that if any one of the three contracts was found to be binding and breached, the plaintiffs would be entitled to recover for breach of contract, and the amount of damages would be the same regardless of how many of the three alleged contracts had been established. Whether the jury's calculation of damages is sustainable will be discussed later.

The defendants make the technical argument that, since Mayor Rendell's letter had not been approved by the City Law Department before it was sent, Mayor Rendell did not have actual

authority to bind the City. That may well be, but he certainly had apparent authority; more important, his letter did no more than acknowledge the continuing validity of the City's previous contractual commitments, and thus provided additional evidence as to the binding nature of the 1988 commitments.

Defendants argue that as to the 1988 contract, the statute of limitations bars recovery. I reject that argument. In the first place, the City did not raise any statute of limitations issue until trial, and must be deemed to have waived any such issue. More important, the undisputed evidence as to the continued interaction between plaintiffs and the defendants makes clear that the limitations period should be tolled, since plaintiffs were repeatedly assured that all would be taken care of.

Two of plaintiffs' claims need little discussion. The "equal protection" claim set forth in Count II was plainly invalid, since plaintiffs have never asserted that they were members of a protected class. In any event, that claim was rejected by the jury.

Plaintiffs' "specific performance" claim was not an issue for the jury to resolve, and appears to have been abandoned in any event. The remaining claims require more extended analysis.

The "Due Process" Claim (Count I)

Plaintiffs' contention, as I understand it, is that the defendants' breaches of contract, considered in combination with the ultimatum to vacate the premises by September 6, 2000, and the efforts made by City officials to manufacture a basis for condemning the houses and evicting the plaintiffs, amounted to violations of plaintiffs' rights to substantive due process. Defendants, on the other hand, seem to have construed plaintiffs' complaint as asserting a violation of procedural due process. I readily agree with the defendants that the evidence would not support a finding that plaintiffs had been deprived of procedural due process (as discussed below, their properties were not "taken," and they were not deprived of their state-court remedies in any event).

As reflected in the Court's charge, to which neither side seems to have objected, Judge Newcomer concluded that the evidence might suffice to establish a substantive due process violation - which required proof that the governmental actions were completely arbitrary and bore "no relationship to a legitimate government interest"; and that the defendants' actions were "conscience-shocking."

Not without some difficulty, I conclude that reasonable minds could well differ as to whether the defendants' actions in this case were sufficiently egregious to constitute a violation

of substantive due process. I therefore will not disturb the jury's findings on that subject, but note that the issue is not of crucial importance, since, as discussed below, I conclude that most, if not all, of the damages attributable to the substantive due process violation would also be recoverable under some of plaintiffs' other theories, and that the verdict must be molded to eliminate duplication of damage awards.

The "Takings Clause" (Count III)

The evidence clearly established that the defendants threatened to "take" plaintiffs' property through eminent domain. If they had actually done so, plaintiffs would have been entitled to pursue remedies under the state eminent domain statute, and thus recover the market value of their properties at the time of the taking. Plaintiffs argued that they had no effective remedy under the eminent domain code, because the City's actions had "poisoned the market," and thus "frustrated" plaintiffs' state-court remedies. I find these arguments puzzling indeed. It is true that, because of the City's earlier breaches of contract, plaintiffs' properties were not worth as much as they might have been had the repairs been completed on time, but they were not totally valueless. If they had been taken, the City would undoubtedly have been required to reimburse plaintiffs for the actual value of their properties at the time of the taking, and plaintiffs would still have the right to recover breach-of-

contract damages because their properties had diminished in value before the taking. I need not pursue these issues, however, since the evidence makes clear that the City did not carry out its threat to condemn the properties. Plaintiffs are still the owners of their houses, and have continued to reside in them. The verdict in favor of plaintiffs on the "takings" claim must be set aside.

"Civil Conspiracy" (Count VI)

The jury awarded each set of plaintiffs \$40,000 on the "civil conspiracy" claim. I conclude that the defendants are entitled to judgment as a matter of law on that set of claims. All of the individual defendants were City officials, employed by the City. Neither they nor the City can be held liable for conspiring among themselves, under the familiar "intra-corporate conspiracy" doctrine. Heffernan v. Hunter, 189 F.2d 405, 412 (3d Cir. 1999); General Refractories Co. v. Fireman's Fund Ins. Co., 337 F.3d 297, 313 (3d Cir. 2003); see also Meyers v. Starke, 420 F.3d 738, 742 (8th Cir. 2005).

It should also be noted that, since the jury apparently found that the defendants completed whatever unlawful conduct they had conspired to do, any damages would have been caused by the completed conduct, rather than by the conspiracy; multiple damages would be inappropriate.

Damages

The jury awarded a total of \$960,000 (\$40,000 per house) as compensatory damages on the civil conspiracy count, and also awarded punitive damages in the amount of \$100,000 against the City and \$200,000 against the Mayor, for a total punitive award of \$300,000 on the civil conspiracy count.

The jury awarded each set of plaintiffs a total of \$250,000 on the breach of contract count (\$150,000 for "expectation damages" and \$100,000 for "emotional distress").

The jury awarded each set of plaintiffs \$100,000 in compensatory damages on the substantive due process count, allocating \$720,000 as the City's share, and \$1,680,000 as Mayor Street's share, and also awarded punitive damages against Mayor Street in the amount of \$1,250,000.

Finally, the jury awarded each set of plaintiffs \$80,000 on the "takings" count.

I have concluded that none of the punitive damage awards can be sustained. Obviously, the City itself is immune from punitive damages. Based upon the allegations in plaintiffs' pleadings, and the evidence at trial, it is clear that none of the individual defendants was being sued in a personal capacity, or could be held liable in a personal capacity. All were City policymaking officials; none had any personal interest at stake in any of the pertinent events or decisions.

There was adequate evidentiary support for the jury's breach of contract award of \$150,000 to each set of plaintiffs for "expectation" damages - i.e., the standard measure of contract damages, putting plaintiffs in as good a position as they would have been in had the breach not occurred. I conclude, also, that the plaintiffs were entitled to recover for "emotional distress," but that there is unacceptable overlap between that award and the identical amount awarded for substantive due process violations. I further conclude that, whether considered as emotional distress caused by the breach of contract, or as a measure of the damages caused by the substantive due process violation which the jury found, any amount in excess of \$100,000 per set of plaintiffs would be excessive and would require a remittitur in any event.

I therefore conclude that the defendants' post-trial motions for judgment as a matter of law should be granted in part and denied in part. Specifically, I conclude that the jury's verdict should be upheld to the extent that it awarded each set of plaintiffs a total of \$250,000, for a total award of \$6 million. I further conclude that judgment should be entered only against the defendant City of Philadelphia, and against the individual defendants in their official capacities.

Motion for a New Trial

The defendants alternatively seek a new trial on the ground that the trial judge improperly cross-examined Mayor Street while he was on the stand. Defendants contend that the overall effect of the judge's questioning was to impugn the veracity of Mayor Street, and improperly influence the jury. The judge's questioning can be interpreted as expressing surprise that the Mayor said he was unable to recall certain important occurrences, and can also be interpreted as suggesting that the Mayor should have been more solicitous of the welfare of his constituents. The judge did, however, immediately issue a curative instruction to the jury. I believe the error was promptly cured. I note, further, that if any harm was done, it may have influenced the jury's award of punitive damages and, since punitive damages are not being allowed, the error has become harmless.

Finally, with respect to the issues as to which the jury's imposition of liability is being upheld, the evidence was so one-sided that plaintiffs were probably entitled to judgment as a matter of law on the breach-of-contract claim.

Conclusions

To the extent that the jury awarded damages for "takings" and "civil conspiracy," defendants' motion for judgment as a matter of law is granted, and those awards set aside. To

the extent that the jury awarded punitive damages, also, the defendants are entitled to judgment, and all awards of punitive damages are set aside.

Because of the need to avoid duplicative recoveries, the jury's verdicts on the breach of contract and substantive due process claims are molded to reflect a total award of \$250,000 per set of plaintiffs, for a total award of \$6 million.

An Order to that effect follows.

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ORDER

AND NOW, this 1st day of December 2005, upon consideration of defendants' post-trial motions, and plaintiffs' responses, IT IS HEREBY ORDERED:

1. Defendants' motion for judgment as a matter of law is GRANTED IN PART, as follows:

(a) To the extent that the jury awarded damages for "takings" and "civil conspiracy," those awards are SET ASIDE.

(b) All awards for punitive damages are SET ASIDE.

2. Because of the need to avoid duplicative recoveries, the jury's verdicts on the breach of contract and substantive due process claims are MOLDED to reflect a total award of \$250,000 per set of plaintiffs, for a total award of \$6 million. That JUDGMENT is entered against the City of Philadelphia, and the individual defendants in their official capacities only.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.